

JAN 09 2002

FEB 7
16 2002

TECH CENTER 1600/2000



Attorney's Docket No. 35718/204664 (5718-107)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Flannagan *et al.* Confirmation No.: 5613
Appl No.: 09/715,909 Group Art Unit: 1647
Filed: November 17, 2000 Examiner: P. Holbrook
For: NOVEL BT TOXIN RECEPTORS FROM LEPIDOPTERAN INSECTS
AND METHODS OF USE

November 13, 2001

Commissioner for Patents
Washington, DC 20231

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Office Action dated October 10, 2001, in which the Examiner has required restriction between Group I, namely claims 1-3, 7, 8, 10-18 as directed to SEQ ID NO1 and nucleotide sequences encoding SEQ ID NO:2; Group II, namely claims 1-3, 7, 8, 10-18 as directed to SEQ ID NO:3 and nucleotide sequences encoding SEQ ID NO:4; Group III, namely claims 1-3, 7, 8, 10-18 as directed to SEQ ID NO:5 and nucleotide sequences encoding SEQ ID NO:6; Groups IV, V, and VI, namely claims 4-6 as directed to SEQ ID NOS:2; 4, and 6, respectively; Groups VII, VIII, and IX, namely claim 9 as directed to SEQ ID NOS:2, 4, and 6, respectively; Groups X, XI, and XII, namely claim 19 as directed to SEQ ID NOS:2, 4, and 6, respectively; and Groups XIII, XIV, and XV, namely claims 20-25 as directed to SEQ ID NOS: 2, 4, and 6, respectively. Applicant hereby provisionally elects with traverse to prosecute the claims of Group I (claims 1-3, 7, 8, and 10-18 as directed to SEQ ID NO:1 and nucleotide sequences encoding SEQ ID NO:2) and expressly reserves the right to file divisional applications or take such other appropriate measures deemed necessary to protect the inventions in the remaining claims and species.

Group I is drawn to novel nucleic acid molecules, and to DNA constructs and host cells comprising the claimed nucleic acid molecules. It is submitted that a search of nucleotide sequences encoding the amino acid sequence set forth in SEQ ID NO:2 will necessarily reveal information relevant to the novelty of this amino acid sequence. Group IV (claims 4-6 as drawn to SEQ ID NO:2) is directed to polypeptides encoded by the nucleic acid molecules of Group I. Accordingly, Groups I and IV should be examined together. MPEP 803 sets forth that "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Applicants submit that the consideration of Groups I and IV together will not be a burden on the Examiner. The issues surrounding the nucleic acid molecule and the polypeptide claims are essentially the same and thus should be considered together. For these reasons, it is requested that the Examiner reconsider and examine Groups I and IV, claims 1-8 and 10-18 as directed to SEQ ID NOS:1 and 2, together.

Applicants further note that the Examiner has restricted between Groups X-XII, directed to methods for screening for ligands that bind *Bt* toxin receptors, and Groups XIII-XV, also directed to methods of screening for ligands that bind *Bt* toxin receptors. The primary difference between the methods of Groups X-XII and the methods of Groups XIII-XV is that the latter groups of claims are directed to screening methods performed in cells expressing the *Bt* toxin receptor. 37 CFR §1.142 requires that the inventions be "independent and distinct." According to MPEP 802.01, "independent" requires that there is no disclosed relationship between the two or more subjects disclosed. The relationship of Groups X-XII and Groups XIII-XV does not meet

In re: Flannagan *et al.*
Appl No.: 09/715,909
Filed: November 17, 2000
Page 3

this standard, because the same polypeptides are used in the methods of both groups and the methods themselves are closely related. Therefore, it is requested that the claims of Groups X-XII and Groups XIII-XV be recombined.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned agent so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those, which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

Kathryn L. Coulter

Kathryn L. Coulter
Registration No. 45,889

<p>CUSTOMER NO. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Raleigh Office (919) 862-2200 Fax Raleigh Office (919) 862-2260</p>	<p>CERTIFICATE OF MAILING</p> <p>I hereby certify that this correspondence is being deposited with the United States Postal service with sufficient postage as first class mail, in an envelope addressed to the Commissioner for Patents, Washington, DC 20231 on November 13, 2001.</p> <p><i>Nora C. Martinez</i> Nora C. Martinez</p>
---	---